

Subpart A—Restrictions on Employment

§ 141.1 Purpose.

This subpart prescribes rules governing restrictions on the employment of personnel on units engaged in OCS activities.

§ 141.5 Applicability.

(a) This subpart applies to employment of personnel on units engaged in OCS activities, except as provided in paragraph (b) of this section.

(b) This subpart does not apply to employment of personnel on any:

(1) Vessel subject to the citizenship requirements of 46 U.S.C. 8103 for pilots, licensed officers, and unlicensed crew when the vessel is transiting to or from an OCS facility or a United States port;

(2) Vessel subject to the citizenship requirements of 46 U.S.C. 7102 and 8103 for officers and crew on federally subsidized or documented vessels; or

(3) Unit over 50 percent of which is owned by one or more citizens of a foreign nation or with respect to which one or more citizens of a foreign nation have the right effectively to control, except to the extent and to the degree that the President determines that the government of such foreign nation or any of its political subdivisions has implemented, by statute, regulation, policy, or practice, a national manning requirement for equipment engaged in the exploration, development, or production of oil or gas in its offshore areas.

(c) The Commandant may, upon request or upon that person's own initiative, determine whether over 50 percent of a particular unit is owned by citizens of a foreign nation or whether citizens of a foreign nation have the right effectively to control the unit.

(d) In determining whether ownership or a right effectively to control exists, the Commandant may consider operational control of a unit, management responsibility, title, lease and charter arrangements, and financial interests.

(e) The owner or operator of any unit affected is notified of the Commandant's determination.

(Information collection requirements contained in paragraph (c) were approved by the Office of Management and Budget under OMB control number 2130–0182)

[CGD 78–160, 47 FR 9379, Mar. 4, 1982, as amended by CGD 97–023, 62 FR 33363, June 19, 1997]

§ 141.10 Definitions.

As used in this subpart:

Citizens of the United States means:

(1) In the case of an individual, one who is a native born, derivative, or fully naturalized citizen of the United States;

(2) In the case of a partnership, unincorporated company, or association, one in which 50% or more of the controlling interest is vested in citizens of the United States; or

(3) In the case of a corporation, one which is incorporated under the laws of the United States or of any State thereof.

Citizen of a foreign nation means:

(1) In the case of an individual, one who is not a citizen of the United States;

(2) In the case of a partnership, unincorporated company, or association, one in which more than 50% of the controlling interest is vested in citizens of a nation other than the United States; or

(3) In the case of a corporation, one which is incorporated under the laws of a nation other than the United States so long as (i) the title to a majority of the stock thereof is free from any trust or fiduciary obligation in favor of any citizen of the United States; (ii) the majority of the voting power in the corporation is not vested in any citizen of the United States; (iii) through any contract or understanding, the majority of the voting power may not be exercised directly or indirectly on behalf of any citizen of the United States; or (iv) by no other means, control of the corporation is conferred upon or permitted to be exercised by any citizen of the United States.

Resident alien means an alien lawfully admitted to the United States for permanent residence in accordance with section 101(a)(20) of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1101(a)(20).

§ 141.15 Restrictions on employment.

(a) Each employer of personnel on any unit engaged in OCS activities that is subject to this part must employ, as members of the regular complement of the unit, only citizens of the United States or resident aliens except as provided by § 141.20.

(b) As used in paragraph (a) of this section, "regular complement of a unit" means those personnel necessary for the routine functioning of the unit, including marine officers and crew; industrial personnel on the unit, such as toolpushers, drillers, roustabouts, floor hands, crane operators, derrickmen, mechanics, motormen, and general maintenance personnel; and support personnel on the unit, such as cooks, stewards and radio operators. The term does not include specialists, professionals, or other technically trained personnel called in to handle emergencies or other temporary operations; extra personnel on a unit for training; and other personnel temporarily on a unit for specialized operations, such as construction, alteration, well logging, or unusual repairs or emergencies.

(c) The Officer in Charge, Marine Inspection, may determine whether a particular individual or position is part of the regular complement of a unit. A copy of the determination is provided to the owner or operator of the unit affected.

(Approved by the Office of Management and Budget under OMB control number 2130-0182)

[CGD 78-160, 47 FR 9379, Mar. 4, 1982, as amended by USCG-1998-3799, 63 FR 35530, June 30, 1998]

§ 141.20 Exemptions from restrictions on employment.

(a) An employer may request an exemption from the restrictions on employment in § 141.15 in order to employ persons other than citizens of the United States or resident aliens as part of the regular complement of the unit under the following circumstances:

(1) When specific contractual provisions or national registry manning requirements in effect on September 18, 1978 provide that a person other than a citizen of the United States or a resident alien is to be employed on a particular unit.

(2) When there is not a sufficient number of citizens of the United States or resident aliens qualified and available for the work.

(3) When the President determines with respect to a particular unit that the employment of only citizens of the United States or resident aliens is not consistent with the national interest.

(b) The request must be in writing, identify the provision of paragraph (a) of this section relied upon, and:

(1) If involving specific contractual provisions under paragraph (a)(1) of this section, list the persons claimed exempt and contain a copy of the contract;

(2) If involving persons without an H-2 Visa under paragraph (a)(2) of this section, list the persons or positions sought to be exempted; or

(3) If under paragraph (a)(3) of this section, identify the unit involved and contain any information in support of the claim.

(c) Requests must be submitted to the Commandant (G-MOC), U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, D.C. 20593.

(d) Upon receipt of a request under paragraph (a)(2) of this section, the Coast Guard seeks information from the Department of Labor concerning whether there are citizens of the United States or resident aliens qualified and available for work. If information is provided that citizens of the United States or resident aliens are qualified and available, the employer may be required to seek their employment before the request is approved.

(e) Upon receipt of a request under paragraph (a)(3) of this section and after consulting with other Federal agencies as appropriate, the Commandant forwards the request and the comments of the Coast Guard and other interested agencies to the President for determination.

(f) Upon approval by the President for request under paragraph (a)(3) of this section or by the Coast Guard for